IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JOHN L. DYE, JR.,

Plaintiff,

v.

CHARLES J. GRISDALE, PH.D., DR. JEFFERY GARBELMAN, PH.D., DR. RALPH FROELICH, M.D.,[1] MICHAEL THURMER, and BELINDA SCHRUBBE

Defendants.

ORDER

11-cv-443-bbc

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Plaintiff John L. Dye, Jr., a prisoner at the Waupun Correctional Institution in Waupun, Wisconsin, is proceeding on claims alleging that defendants Dr. Charles Grisdale, Jeffery Garbelman, Dr. Ralph Froelich, Michael Thurmer and Belinda Schrubbe, all current or former employees at the prison, were deliberately indifferent to his serious medical needs when they denied plaintiff the ability to eat his meals alone in an adequately private cell, despite their knowledge of his psychiatric conditions that prevent him from eating in the presence of others. The parties have completed briefing plaintiff's motion for preliminary injunctive relief. In addition, plaintiff has filed a motion for the court to examine the

[1]Defendants have identified defendant "Doctor Ralph" as Dr. Ralph Froelich, M.D. The caption has been changed from previous pleadings in this case to reflect this new information.

authorization for release of plaintiff's medical records. For reasons stated below, I will deny both motions.

AUTHORIZATION FOR RELEASE OF MEDICAL RECORDS

The parties have long been unable to come to an agreement regarding plaintiff's authorization to release medical records to defendants. In an April 6, 2012 order, Magistrate Judge Stephen Crocker issued an order directing defendants to submit an authorization form releasing all of plaintiff's medical records, but including a stipulation to a protective order limiting the redisclosure of those records. Plaintiff has now signed the release and stipulation, but states that he does so "involuntarily pending decision" on his motion to have the court examine the authorization form, which he believes is still far too broad because it allows for redisclosure even after the end of the lawsuit and contains a warning that information may be released to parties who are not subject to federal health privacy laws.

Plaintiff's worries about the redisclosure of his medical information are understandable, but I will deny the motion because plaintiff misunderstands the purpose of the protective order. That order is significantly more restrictive than the terms of the authorization form. It limits redisclosure to parties who agree to be bound by the order as well as explaining that all materials released to defendants must be destroyed at the conclusion of the litigation. Thus, there seems to be little reason for plaintiff to have concern about the seemingly broader provisions of the authorization document. To the

extent that plaintiff continues to believe that the protective measures are not strict enough, he may choose to dismiss the case rather than subject his information to further disclosure.

PRELIMINARY INJUNCTIVE RELIEF

In his complaint, plaintiff states that he has had his "single cell and "feed cell" statuses removed and seeks preliminary injunctive relief against defendants, stating vaguely that he wants defendants enjoined from "their present course of actions, inactions, or woefully inadequate actions, described herein. . . ." The parties have completed briefing the motion in accordance with the court's procedures. For the purpose of deciding plaintiff's motion for a preliminary injunction, I find from the parties' proposed findings of fact and supporting materials that the following facts are material and undisputed, unless otherwise noted.

A. Undisputed Facts

Plaintiff John L. Dye, Jr. is a prisoner housed at the Waupun Correctional Institution. All of the defendants were Wisconsin Department of Correction employees who worked at the prison during the relevant time period. Defendant Michael Thurmer was the warden. Defendant Belinda Schrubbe was a "Health Services Manager" at the prison. Defendant Dr. Jeffrey Garbelman, Ph.D. is the Psychological Supervisor of the prison's Psychological Services Unit. Defendant Dr. Ralph Froelich, M.D., was a psychiatrist working at the prison. Defendant Charles J. Grisdale, Ph.D. was a psychologist employed by the prison.

There appears to be a dispute between the parties about whether defendants Thurmer and Froelich are currently employed by the Department of Corrections.

Plaintiff alleges that he suffers from a psychological disorder that prevents him from eating in the presence of other people, including inmates and prison staff. He also alleges that he suffers from chronic anxiety, which is exacerbated by the noise and lack of privacy commonly associated with prison life for an inmate. Further, both conditions are somewhat intertwined, and tend to exacerbate each other.

When plaintiff first arrived at Waupun on April 21, 2010, his eating-based disorder had not yet surfaced for the prison staff because, as a new inmate, he was given his own cell and was allowed to eat his meals there, procedures known as "single cell" status and "feed cell" status, respectively. Plaintiff was granted these statuses as part of a temporary "transitional period," to help new inmates cope with life in a maximum-security environment.

Despite these special statuses, however, he did experience anxiety-related symptoms as a result of the noise and other "stressors" of his cell environment in North Cell Hall. He had a few discussions about his distress with defendant Grisdale during this time. As a result of these discussions, Grisdale permitted plaintiff's transfer from North Cell Hall to a cell block known as the Behavioral Health Unit on December 21, 2010. The Behavioral Health Unit is a special housing unit at the prison designed to assist prison staff in providing a therapeutic environment to inmates who cannot function adequately in the general prison population. The purpose of this move was to provide plaintiff with a quieter environment.

The move had the opposite effect on plaintiff, however, because the doors on the cells in the Behavioral Health Unit are "open bar" doors. (The parties do not explain exactly what these bars are; apparently they are a different and less private type of door than the type used in North Cell Hall.) The lack of privacy caused by the "open bar"-type cell door in plaintiff's cell in the Behavioral Health Unit exacerbated plaintiff's disorders, causing him anxiety and preventing him from eating.

A roughly two-week period followed, in which plaintiff did not eat, apparently as a result of his disorders and the lack of privacy of the Behavioral Health Unit cells. During this time he was in contact with various prison staff, including defendants Schrubbe, and Dr. Froelich, and he wrote to all of the defendants except Dr. Froelich, informing them of his inability to eat in his cell in the Behavioral Health Unit and asking to be removed from that unit. The only action taken by prison staff during this time was to check periodically on his vital signs. No change in his cell or cell conditions was made by any of the defendants or by any other prison staff.

On January 5, 2011, plaintiff was moved from the Behavioral Housing Unit back to North Cell Hall. He was also permitted to keep his "single cell" and "feed cell" statuses. A week later on January 12, 2011, plaintiff received a Clinical Restriction Notification informing him that his "single cell" and "feed cell" statuses had been rescinded by prison staff. The same day, he sent letters to defendants Grisdale, Garbelman, Thurmer and Schrubbe informing them of his situation and he met with defendant Dr. Froelich in person. No help was offered by the prison or the defendants until March 16, 2011, when defendant

Grisdale reinstated plaintiff's single cell and feed cell statuses for six months, and later extended the statuses for an additional 90 days, although with no guarantee that the statuses would continue.

B. Discussion

Injunctive relief is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to [it]." Winter v. National Resources Defense Council, 555 U.S. 7, 22 (2008). The standard applied to determine whether a plaintiff is entitled to preliminary injunctive relief is well established:

> A district court must consider four factors in deciding whether a preliminary injunction should be granted. These factors are: 1) whether the plaintiff has a reasonable likelihood of success on the merits; 2) whether the plaintiff will have an adequate remedy at law or will be irreparably harmed if the injunction does not issue; 3) whether the threatened injury to the plaintiff outweighs the threatened harm an injunction may inflict on defendant; and 4) whether the granting of a preliminary injunction will disserve the public interest.

Pelfresne v. Village of Williams Bay, 865 F.2d 877, 883 (7th Cir. 1989). At the threshold, plaintiff must show some likelihood of success on the merits and the probability that irreparable harm will result if the requested relief is denied. If plaintiff makes both showings, the court then moves on to balance the relative harms and public interest, considering all four factors under a "sliding scale" approach. In re Forty-Eight Insulations, Inc., 115 F.3d 1294, 1300 (7th Cir. 1997). Because it is not apparent on its face whether plaintiff might succeed on the merits of this case, I begin by discussing the second element.

I understand that plaintiff is asking to be placed in conditions that do not exacerbate his eating or anxiety disorders. Specifically, plaintiff seeks to avoid losing his single cell and feed cell restrictions. For a preliminary injunction to be warranted in this case, plaintiff needs to show that no legal remedy is sufficient to compensate him and that he would suffer an irreparable harm if the prison is not enjoined from rescinding his single cell and feed cell statuses.

An *irreparable* harm means one that is *likely* in the absence of an injunction. Winter, 555 U.S. at 22. This likelihood standard requires a showing by the plaintiff that there is more than just a possibility that the harm sought to be prevented will occur. Id. "[A] 'speculative' injury does not constitute an irreparable injury justifying injunctive relief." Singer Co. v. P.R. Mallory & Co., 671 F.2d 232, 235 (7th Cir. 1982) (citations omitted).

In this case, plaintiff alleges that he was deprived of conditions that would allow him to eat adequately for a two-week period between December 21, 2011 and January 5, 2011, in the Behavioral Health Unit and again for a nine-week period between January 12, 2011 and March 16, 2011, in the North Cell Hall. However, plaintiff does not allege that he is being deprived of these conditions at this time; instead, he ends his proposed findings of fact by stating that defendant Grisdale has reinstated his single cell and feed cell statuses. Moreover, plaintiff does not allege that noise or other stressors are currently exacerbating his mental health problems, as they did in his first stint in the North Cell Hall. In light of this, the focus of his injunction request appears to be to prevent the harm that might result to him if the prison or any of the defendants should take away either of his single cell or feed

cell statuses in the future. But plaintiff has not shown that any of the defendants will do so, now or in the future. This harm, therefore, does not rise to the level of being likely at this time and therefore, does not warrant an injunction.

Further, because plaintiff has not shown he will suffer an irreparable harm, he cannot show the inadequacy of the remedies at law available to him. Without any likelihood of a future harm, all that remains are the allegations of past harm by defendants. The available remedies at law are adequate to compensate plaintiff for these past harms, if he can prove them.

Accordingly, plaintiff has failed in his burden to demonstrate the grounds necessary for a preliminary injunction. His motion for preliminary injunction will be denied. Plaintiff remains free to file a new motion for preliminary injunctive relief if his circumstances change.

ORDER

IT IS ORDERED that

1. Plaintiff John L. Dye's motion to examine the authorization for release of medical records, dkt. #38, is DENIED.

2. Plaintiff's motion for a preliminary injunction, dkt. #2 , is DENIED.

Entered this 26th day of July, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge